**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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| **UNITED STATES OF AMERICA**<br><br>**v.**<br><br>**KURT KRUMPHOLZ** | **CRIMINAL NO. 15-245** |

**MEMORANDUM RE DEFENDANT'S MOTION FOR RECONSIDERATION**

**Baylson, J.** **April 21st_, 2016**

## I. Introduction

Defendant Kurt Krumpholz has moved this Court (ECF 42) to reconsider its Order and Memorandum Opinion (ECF 39) denying Defendant's Motion to Suppress (ECF 14). Familiarity with that Opinion is assumed. For the reasons discussed below, Defendant's Motion for Reconsideration shall be denied.

## II. Factual Background and Procedural History

### A. Proceedings Leading Up to This Court's Prior Opinion

This case began with an exchange of approximately 76 emails following a posting on the website Craigslist. Defendant posted an ad which came to the attention of Detective Michael Henricks as possibly being indicative of soliciting sex with a minor. Detective Henricks posed as a 14 year old named "Mike Richards," corresponded with Defendant over the course of two days, and arranged to meet Defendant at a Friendly's restaurant in East Norriton, Pennsylvania. Defendant was arrested outside that restaurant on January 19, 2015. The Court previously held that the police had probable cause to arrest Defendant for the felony offense of Attempt to Commit Involuntary Deviate Sexual Intercourse with a Child Under the Age of 16 Years, in violation of 18 Pa. C.S.A. § 3123(a)(7) (2015), ECF 39 at 5-7, and Defendant has not raised that aspect of the Court's ruling in his Motion for Reconsideration.

When the police arrested Defendant, they discovered a cell phone on the front seat of his car. The police subsequently obtained a warrant to search the phone and found images of child pornography and the emails between the Craigslist poster and "Mike Richards." ECF 34-2. After obtaining that evidence, on January 23, 2015 the police sought and were granted an additional search warrant to search Defendant's home. Id. The affidavit offered in support of the warrant for the residence made reference to evidence obtained from the search of the cell phone. Id. Police seized approximately 50 pieces of electronic media as part of the search of the home.

Defendant's original Motion to Suppress, filed on August 6, 2015, sought to suppress evidence obtained from the searches of both the cell phone and Defendant's residence. ECF 14. The Court held a hearing on the Motion on November 9, 2015, and allowed the parties to submit supplemental briefing. The Government filed a supplemental brief on January 8, 2016 (ECF 34). In that brief, the Government conceded that it will not offer any evidence from Defendant's cell phone during its case in chief. ECF 34 at 20. The Court will accordingly assume for purposes of this Motion that the search of the phone was not in accord with current jurisprudence.

On January 22, 2016, the Court denied Defendant's Motion, holding as to the cell phone that the Government's concession had rendered the Motion moot. ECF 39. As to evidence obtained from Defendant's home, the Court held that "[a]ssuming that evidence from the search of Defendant's cell phone could not contribute to probable cause for a search warrant of his home, the government still had sufficient independent probable cause to justify the warrant [for the home]." ECF 39 at 7. Defendant has not raised this aspect of the Court's opinion in his Motion for Reconsideration. ECF 53 at 4-5.

### B. Basis for Defendant's Motion for Reconsideration

Defendant seeks reconsideration because the Government made arguments in its January 2016 supplemental brief that it did not raise at the November hearing. Specifically, the Government first revealed as part of its supplemental post-hearing briefing that the "Mike Richards" emails found on Defendant's cell phone were also recovered from the computer equipment seized during the search of Defendant's home. ECF 34 at 21 n.12.

After the Government filed an Opposition to the Motion for Reconsideration (ECF 45), the Court held another hearing on March 8, 2016, at which Detective Henricks was the sole witness. The Court then allowed Defendant to file a final supplemental brief on April 14. ECF 55.

Defendant argues that the police only sought a warrant to search Defendant's home based on the evidence recovered from the cell phone. ECF 42 at 9-13. In support of his argument, Defendant points to a report Detective Henricks created on January 27, 2015 detailing his investigation up to that point. ECF 42-2 Def. Ex. B. In this report, Detective Henricks (who is based in Montgomery County) documented his efforts to liaise with Bucks County detective Martin McDonough in an effort to obtain a warrant for Defendant's Bucks County residence. The report states that Henricks was to "review the evidence from the cell phone and contact [McDonough] if any information was obtained" and further states that Henricks only contacted McDonough about obtaining a warrant for Defendant's residence after Henricks was in possession of the evidence obtained from the phone. Id. ("Based on this information, [Henricks] contacted Det. McDonough about obtaining a search warrant for Krumpholz's house.").

Defendant has also called Detective Henricks' credibility into question to undermine Henricks' assertion that Henricks would have applied for a warrant to search Defendant's home

regardless of what evidence was obtained from the cell phone. For example, Defendant highlights that Detective Henricks maintains that Defendant was "being held for investigative purposes" rather than under arrest when police took him into custody outside Friendly's on January 19, 2015. ECF 55 at 4. The Government, however, has conceded that Defendant was arrested. ECF 23 at 4 n.2. Defendant also highlights purported inconsistencies in Henricks' testimony at the November and March evidentiary hearings. ECF 55 at 16-17.

In its Opposition, the Government explained that the existence of the emails on the devices recovered from Defendant's residence was not disclosed until January 2016 because the Government only discovered them after a supplemental search. ECF 45 at 18-20. The Government argues that Henricks would have sought a warrant even without the evidence obtained from the cell phone because Henricks already had the emails from the Craigslist poster. ECF 45 at 13-14. Given Defendant's presence at the place and time where the poster was to meet "Mike Richards," the Government contends, Henricks would have sought and likely obtained a warrant to search Defendant's home to look for electronic evidence confirming that Defendant was in fact the sender.

## III. Analysis

"Typically, the exclusionary rule requires that we suppress evidence obtained as a result of an illegal search. However, the independent source doctrine serves as an exception to the exclusionary rule and permits the introduction of evidence initially discovered during, or as a consequence of, an unlawful search, but later obtained independently from activities untainted by the initial illegality." United States v. Stabile, 633 F.3d 219, 243 (3d Cir. 2011) (citations omitted). Admissibility of evidence under the independent source doctrine turns on "two questions: (1) whether a neutral justice would have issued the search warrant even if not

presented with information that had been obtained during an unlawful search and (2) whether the first search prompted the officers to obtain the search warrant." United States v. Herrold, 962 F.2d 1131, 1144 (3d Cir. 1992).

The Court previously held that "[a]ssuming that evidence from the search of Defendant's cell phone could not contribute to probable cause for a search warrant of his home, the government still had sufficient independent probable cause to justify the warrant." ECF 39 at 7. Defendant has not challenged this aspect of the Court's opinion in his Motion for Reconsideration. The key question, then, is whether the Government's search of Defendant's cell phone prompted them to apply for the warrant to search his home.

Defendant argues that Henricks' report constitutes an admission that Henricks only applied for a warrant to search Defendant's home based on the information Henricks obtained during the search of the cell phone. Defendant also argues that Detective Henricks' assertion that he would have applied for a warrant is not credible because Detective Henricks is not credible.

The Court rejects Defendant's arguments for four reasons.

First, the fact that Henricks unquestionably did wait until after obtaining evidence from the cell phone to pursue the warrant for the residence is not dispositive as to what he would have done had the cell phone never been searched at all. See Murray v. United States, 487 U.S. 533, 542 n.3 (1988) ("To determine whether the warrant was independent of the illegal entry, one must ask whether it would have been sought even if what actually happened had not occurred—not whether it would have been sought if something else had happened.").

Second, and notwithstanding the purported inconsistencies highlighted by Defendant, the Court finds Detective Henricks a credible witness. The Court accordingly credits his assertion that he would have applied for the warrant regardless of what the cell phone revealed.

Third, in this case the police had probable cause to arrest Defendant for the crime of Attempt to Commit Involuntary Deviate Sexual Intercourse with a Child Under the Age of 16 Years, in violation of 18 Pa. C.S.A. § 3123(a)(7) (2015). That probable cause stemmed in substantial part from email communications. Testimony at the March hearing confirmed the common sense proposition that email messages must be sent through devices connected to the internet, such as cell phones or tablets. ECF 53 at 7-9. Much as the Third Circuit has held that it would be "impossible" or "inconceivable" that law enforcement would not have applied for a search warrant when presented with "lurid file names indicative of child pornography," Stabile, 633 F.3d at 245, so too is it impossible to believe that police would not have obtained a search warrant for electronic media in Defendant's residence so as to potentially locate the incriminating emails that they believed that Defendant sent. See also United States v. Carter, 530 F. App'x 199, 204 (3d Cir. 2013) (unpublished) ("inconceivable" that police would not have applied for a warrant to search a home to look for computer-related evidence based on facts suggesting a crime involving use of computers had occurred).

Finally, the argument that Henricks would have applied for a warrant is further bolstered by his testimony that it is not his ordinary practice to call a Bucks County detective merely upon arresting someone who resides in Bucks County. ECF 53 at 29-30. The fact that Henricks called Detective McDonough even before a comprehensive analysis of Defendant's cell phone had been completed supports the inference that he was already at least considering applying for a warrant to be executed in Bucks County, where Defendant resides. Cf. United States v. Barefoot, 391 F.

App'x 997, 999 (3d Cir. 2010) (unpublished) (rejecting defendant's argument that police would not have relied on a single source absent material gleaned from an illegal search).

## IV. Conclusion

The Court concludes that the police would have applied for a warrant to search Defendant's residence even without having examined Defendant's cell phone. Consequently, the evidence recovered from the search of the home is admissible pursuant to the independent source doctrine even assuming the search of Defendant's cell phone was unlawful.[1] Defendant's Motion for Reconsideration shall therefore be denied.

An appropriate Order follows.

[1] Although not addressed by the parties, the Court would reach the same result under the inevitable discovery doctrine. As the Third Circuit explained,

> Under the independent source doctrine, evidence that was in fact discovered lawfully, and not as a direct or indirect result of illegal activity, is admissible. In contrast, the inevitable discovery doctrine, applied in Nix, permits the introduction of evidence that inevitably would have been discovered through lawful means, although the search that actually led to the discovery of the evidence was unlawful. The independent source and inevitable discovery doctrines thus differ in that the former focuses on what actually happened and the latter considers what would have happened in the absence of the initial search.

United States v. Stabile, 633 F.3d 219, 243 n.22 (3d Cir. 2011) (citations and alterations omitted) (emphasis in original). The Court finds here that "the police, following routine procedures, would inevitably have uncovered the evidence," id. at 245, for much the same reason that it finds that the search of the cell phone did not prompt Henricks to apply for a search warrant for Defendant's home: a reasonable police officer faced with the emails to "Mike Henricks" and with Defendant's actions outside Friendly's, inevitably would have obtained a warrant to search Defendant's home to attempt to uncover further proof that Defendant was the Craigslist poster.

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**ORDER**

**AND NOW**, this 21st day of April, 2016, upon consideration of Defendant's Motion for Reconsideration (ECF 42) and all submissions related thereto, and for the reasons stated in the accompanying Memorandum, it is hereby **ORDERED** that Defendant's Motion is **DENIED.**

**BY THE COURT:**

***/s/ Michael M. Baylson***

**MICHAEL M. BAYLSON, U.S.D.J.**